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Attorneys for Plaintiff Drew Hill

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

DREW HILL,	)	Case No.: <b>'12CV0388 L NLS</b>
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
RICHARD J. BOUDREAU &	)	DEMAND FOR JURY TRIAL
ASSOCIATES, LLC a Massachusetts	)	
limited liability company; RICHARD J.	)	
BOUDREAU, individually and in his	)	
official capacity,	)	
	)	
Defendant.	)	

**INTRODUCTION**

1. This is an action for actual damages, statutory damages, attorney fees and costs brought by an individual consumer, Drew Hill, (hereinafter "Plaintiff") for Richard J. Boudreau & Associates, LLC., a Massachusetts limited liability company; Richard J. Boudreau, individually and in his official capacity (hereinafter "Defendants") violations of the Fair Debt Collection practices Act, *15 U.S.C. § 1692, et seq.* (hereinafter "FDCPA")<sup>1</sup> the Rosenthal Fair

<sup>1</sup> All undesignated section references to §1692 are to the FDCPA

1 Debt Collection Practices Act, *California Civil Code § 1788 et seq.* (hereinafter “the Rosenthal  
2 Act”)<sup>2</sup> which prohibit debt collectors from engaging in abusive, deceptive and unfair practices  
3 and the Telephone Consumer Protection Act, *47 U.S.C. §277 et seq.* (hereinafter “TCPA”)<sup>3</sup>  
4 which prohibits the making of unconsented to phone calls to cell phones.

5 2. Plaintiff makes these allegations on information and belief, with the exception of  
6 those allegations that pertain to Plaintiff, or to plaintiff’s counsel, which Plaintiff allege on  
7 personal knowledge.

8 3. While many violations are described below with specificity, this Complaint  
9 alleges violations of the statutes cited in their entirety.

#### 10 **JURISDICTION AND VENUE**

11 4. This action arises out of Defendant’s violations of the FDCPA , Rosenthal Act  
12 and TCPA.

13 5. Jurisdiction arises pursuant to *28 U.S.C. § 1391, 1337, 15 U.S.C. §1692(k)(d), and*  
14 *47 U.S.C. §277 et seq.* and *28 U.S.C. §1367* for supplemental state claims.

15 6. Venue is proper in this Court pursuant to *28 U.S.C. § 1391*.

#### 16 **THE PARTIES**

17 7. Plaintiff is a natural person residing in San Diego County, California.

18 8. Plaintiff is a “consumer” within the meaning of *§ 1692a(3)* in that he is a natural  
19 person purportedly obligated to pay a credit card debt, allegedly owed to RBS Card Services,  
20 (hereinafter “Debt”)

21 9. Plaintiff is a “debtor” as that term is defined by *§1788.2(h)*.

22 10. Plaintiff is a “person” as defined by *47 U.S.C. §153(10)*.

23 11. At all times relevant herein, Defendant Richard J. Boudreau & Associates, LLC  
24 was a company engaged, by use of the mails and telephone in the business of collecting debts, as  
25 defined by *§1692a(5)*, and consumer debts as defined by *§ 1788.2(f)*. Defendant Richard J.

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26  
27 <sup>2</sup> All undesignated section references to §1788 are to the Rosenthal Act

28 <sup>3</sup> All undesignated section references to 47 U.S.C. §277 are to the TCPA

1 Boudreau & Associates, LLC regularly attempts to collect debts alleged to be due another and is  
2 therefore a debt collector within the meaning of § 1692a(6) and § 1788.2(c).

3 12. At all times relevant herein, Defendant Richard J. Boudreau was a natural person  
4 and an employee, agent, officer, member and/or director of Richard J. Boudreau & Associates,  
5 LLC. Richard J. Boudreau was a third-party debt collector that was engaged, by use of the mails  
6 and telephone in the business of collecting debts, as defined by § 1692a(5), and consumer debts  
7 as defined by § 1788.2(f). Richard J. Boudreau regularly attempts to collect debts alleged to be  
8 due another and is therefore a debt collector within the meaning of § 1692a(6) and § 1788.2(c).  
9 Richard J. Boudreau is liable for the acts of Richard J. Boudreau & Associates, LLC because  
10 he sets and approves the collection policies, practices and he directed the unlawful activities  
11 described herein.

12 13. As Defendants does business in the state of California, and committed the acts  
13 that form the basis for this suit in the state of California, which includes using instrumentalities  
14 of interstate commerce by making phone calls across State boundaries to consumers residing in  
15 the Southern District of California, and by mailing letters to consumers in the Southern District  
16 of California, this Court has personal jurisdiction over Defendants for purposes of this action.

17 **FACTUAL ALLEGATIONS**

18 14. At all times herein, Defendant, was attempting to collect, from Plaintiff, a debt as  
19 defined by § 1692a (5) of the FDCPA and a consumer debt as defined by § 1788.2(f) of the  
20 Rosenthal Act.

21 15. Prior to May 25, 2011, Plaintiff allegedly fell behind in the payment allegedly  
22 owed on the alleged debt. Plaintiff currently neither admits nor denies that the debt is valid.

23 16. Prior to May 25, 2011, the alleged debt was assigned, placed or otherwise  
24 transferred to Defendant for collection.

25 17. Thereafter, Defendants, sent a collection letter (hereinafter “Exhibit A”) to  
26 Plaintiff. A true and accurate copy of the letter and attachment is attached hereto and fully  
27 incorporated by reference as Plaintiff’s “Exhibit A”.

28 18. The statements in Exhibit A were communications within the meaning of

1 §1692a(2).

2 19. Exhibit A is dated September 2, 2011.

3 20. Exhibit A was the first written communication from Defendants to Plaintiff in  
4 connection with the collection of the alleged debt.

5 21. Exhibit A informs the reader of the debt being collected in 11 point type.

6 22. Exhibit A provides the notice required by *Cal. Civil Code §1812.700(a)* in a point  
7 type size of approximately 9.

8 23. Exhibit A provides the notice required by *Cal. Civil Code §1812.700(a)* in a point  
9 type size that is smaller than the 12 point type size and smaller than the type size used to inform  
10 Plaintiff of the specific debt being collected.

11 24. Plaintiff is informed and believes and thereon alleges that Defendants have sent  
12 standard form collection letters in the form of Exhibit A to numerous persons in California in the  
13 one year period preceding the filing of this Complaint. Therefore, Plaintiff may seek leave to  
14 amend this Complaint to add class allegations at a later date.

15 25. Beginning on or about August 26, 2011, and on multiple occasions since that  
16 time, Defendant has constantly and continuously placed collection calls to Plaintiff seeking and  
17 demanding payment for an alleged debt with the intent to annoy, abuse and/or harass him.

18 26. These phone calls were communications within the meaning of §1692a(2).

19 27. These phone calls were debt collections as defined in §1788.2(b).

20 28. These phone calls were made to Plaintiff before 8:00 a.m. Pacific Standard Time.

21 29. By communicating with Plaintiff before 8:00 a.m. Pacific Standard Time, a  
22 presumptively and actually inconvenient time per §1692c(a)(1), Defendant violated  
23 §1692c(a)(1).

24 30. By engaging in this conduct the natural consequence being harassment and  
25 oppression of the Plaintiff in connection with the collection of a debt, Defendant violated §1692d  
26 and §1788.11(e).

27 31. Because these communications violated the language in §1692c(a)(1), Defendant  
28 also violated §1788.17 of the Rosenthal Act as it incorporates §1692c(a)(1).

1           32. Defendant placed these calls to Plaintiff's cellular telephones via an "automatic  
2 telephone dialing system," as defined by 47 U.S.C. §227(a)(1).

3           33. During these telephone calls Defendant used "an artificial or prerecorded voice"  
4 as prohibited by 47 U.S.C. §227(b)(1)(A).

5           34. These telephone calls constituted calls that were not for emergency purposes as  
6 defined by 47 U.S.C. §227(b)(1)(A)(i).

7           35. These telephone calls by Defendant violated 47 U.S.C. §227(b)(1).

8           36. The telephone calls by Defendants harmed Plaintiff by numerous ways including  
9 but not limited to the following:

10                   (a) caused Plaintiff to incur certain cellular telephone charges or reduce cellular  
11 telephone time for which Plaintiff previously paid,

12                   (b) waking him in the early morning repeatedly and continuously caused him  
13 stress, anxiety over anticipation of future early morning calls, frustration at  
14 being unable to predict or stop the early morning calls, loss of sleep and  
15 resulting overall diminished abilities to carry on his activities of daily living.

16                                   **FIRST CLAIM FOR RELIEF**

17                                   **(Violations of the FDCPA)**

18           37. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations  
19 contained in the paragraphs above.

20           38. The foregoing acts and omissions constitute numerous and multiple violations of  
21 the FDCPA, including but not limited to each and every one of the above cited provisions of  
22 §1692 *et seq.*

23           39. As result of each and every violation of the FDCPA, Plaintiff is entitled to any  
24 actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to  
25 \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); reasonable attorney's fees and costs pursuant  
26 to 15 U.S.C. § 1692k(a)(3) from defendant.

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28 ///

**SECOND CLAIM FOR RELIEF**

**(Claim for violations of the Rosenthal Act)**

40. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in the paragraphs above.

41. Plaintiff is entitled to statutory damages of \$1000.00 under §1788.17 of the Rosenthal act for Defendant violations, as enumerated above, of the FDCPA. Because the above stated conduct violated certain portions of the FDCPA as these portions are incorporated by reference in §1788.17, each of those acts or omissions also violated §1788.17.

42. Plaintiff is entitled to statutory damages of \$1000.00 under §1788.30(b) for Defendant violations, as enumerated above, of the §1788.11(e).

43. Pursuant to §1788.32, the remedies provided under §§1788.30(c) and 1788.17 are intended to be cumulative and in addition to any other procedures, rights or remedies that Plaintiff may have under any other provision of law.

44. Plaintiff is also entitled to attorney's fees and costs for violations of the Rosenthal Act pursuant to §1788.30(c).

**THIRD CLAIM FOR RELIEF**

**(California Consumer Collection Notice)**

45. Plaintiff repeats, re-alleges, and incorporates by reference all the allegations contained in the paragraphs above.

46. Plaintiff brings this third claim for relief against Defendants under *Cal. Civil Code §1812.700-702*.

47. Defendants failed to include, in Exhibit A, the notice required by *Cal. Civil Code §1812.700(a)* in a point type size that was at least the same type-size as that used to inform Plaintiff of his specific debt or 12 point type size in violation of *Cal. Civil Code §1812.701(b)*.

48. Defendants acts as described above were done willingly and knowingly with the purpose of coercing Plaintiff to pay the debt, within the meaning of § 1788.30(b).

49. As a result of Defendants willful and knowing violations of *Cal. Civil Code §1812.700(a)*, Plaintiff is entitled to statutory damages of not less than one hundred dollars

1 (\$100) and not more than one thousand dollars (\$1000.00) under *Cal. Civil Code §1812.702*.<sup>4</sup>

2 50. Plaintiff is also entitled to his attorney's fees and costs for violations of *Cal. Civil*  
3 *Code §1812.700(a)* pursuant to *Cal. Civil Code §1812.702*.<sup>5</sup>

4 51. Pursuant to §1788.32, the remedies provided under §§1788.30(c) and 1788.17 are  
5 intended to be cumulative and in addition to any other procedures, rights or remedies that  
6 Plaintiff may have under any other provision of law.

7 **FOURTH CLAIM FOR RELIEF**

8 **(Negligent Violations of the TCPA)**

9 52. Plaintiff incorporates by reference all of the above paragraphs of this Complaint  
10 as though fully stated herein.

11 53. The foregoing acts and omissions of Defendant constitute numerous and multiple  
12 negligent violations of the TCPA, including but not limited to each and every one of the above-  
13 cited provisions of 47 U.S.C. §227 *et seq.*

14 54. As a result of Defendant's negligent violations of 47 U.S.C. §227 *et seq.*, Plaintiff  
15 is entitled to an award of \$500.00 in statutory damages for each and every violation, pursuant to  
16 47 U.S.C. §227(b) (3) (B).

17 55. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in  
18 the future.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Knowing And/Or Willful Violations of the TCPA)**

21 56. Plaintiff incorporates by reference all of the above paragraphs before his Fourth  
22 Count for Relief as though fully stated herein.

23 57. The foregoing acts and omissions of Defendant constitute numerous and multiple  
24 knowing and/or willful violations of the TCPA, including but not limited to each and every one  
25 of the above-cited provisions of 47 U.S.C. §227 *et seq.*

26 \_\_\_\_\_  
27 <sup>4</sup> §1788.30(b)

28 <sup>5</sup> §1788.30(c)

58. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §227 et seq., Plaintiff is entitled to an award of \$1,500.00 in statutory damages for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and for Plaintiff, and pray for the following relief:

- (1) Assume jurisdiction in this proceeding;
- (2) Declare that the Defendant violated the FDCPA;
- (3) Declare that the Defendant violated the Rosenthal Act;
- (4) Declare that the Defendant violated *Cal. Civil Code §1812.701(b)*
- (5) Declare that the Defendant violated the TCPA;
- (6) Award of actual damages in accordance with proof at trial, pursuant to §1692k(a)(1) of the FDCPA;
- (7) Award of statutory damages of \$1,000.00 pursuant to § 1692k(a)(2)(A) of the FDCPA;
- (8) Award of statutory damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000.00) pursuant to § 1788.30(b) of the Rosenthal Act;
- (9) Award of statutory damages of \$1,000.00 pursuant to § 1788.17<sup>6</sup> of the Rosenthal Act;
- (10) Award of statutory damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000.00) pursuant to *Cal. Civil Code §1812.702*<sup>7</sup>.
- (11) Award of the costs of litigation and reasonable attorney's fees, pursuant to §1692k (a) (3) of the FDCPA and §§1788.17<sup>8</sup> and 1788.30(c) of the

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<sup>6</sup> § 1692k(a)(2)(A) of the FDCPA

<sup>7</sup> §1788.30(b) of the Rosenthal Act



Rosenthal Act;

(12) Award of statutory damages of \$500.00 for each and every negligent violation of the TCPA, pursuant to *47 U.S.C. §227(b)(3)(B)*

(13) Award of statutory damages of \$1,500.00 for each and every knowing and/or willful violation of the TCPA, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*

(14) Such other and further relief this court may deem just and proper.

**TRIAL BY JURY**

59. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Lester & Associates

February 13, 2012  
Dated

s/Patric A. Lester  
By Patric A. Lester  
Attorney for Plaintiff,  
DREW HILL

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<sup>8</sup> §1692k(a)(3)